G.

v.

Interpol

136th Session **Judgment No. 4661**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs T. G. against the International Criminal Police Organization (Interpol) on 22 November 2019, Interpol's reply of 10 March 2020, the complainant's rejoinder of 10 October 2020 and Interpol's surrejoinder of 18 February 2021;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

Considering that the facts of the case may be summed up as follows:

The complainant seeks reimbursement for medical expenses and challenges overall the insurance policy.

The complainant, a British national, joined Interpol on 1 June 2017 under a fixed-term contract as a Legal Counsel in the Office of Legal Affairs at the General Secretariat in Lyon (France). Pursuant to Regulation 7.1 of the Staff Manual, all Lyon-based officials shall be covered by the French Social Security Scheme and are eligible to that coverage, in principle, for treatments in France only. That insurance is supplemented by a private insurance provider which, at the time the complainant joined the Organization, was company C. and was subsequently replaced by company H. on 1 January 2018. Only

officials working outside France could benefit from the "H. 1st euro scheme" as the main coverage.

By email of 11 December 2017, the complainant contacted the Human Resources Management Division (HRMD) to inquire about the extent of the medical coverage for treatment that she would need to undergo in the United Kingdom. She further asked whether it would be possible for her to opt out of the French Social Security Scheme and to choose instead either the H. 1st euro scheme or her own private insurance in order for her to make sure that the treatment she would receive in the United Kingdom would be covered. She was informed that the French Social Security Scheme normally reimburses for treatments in France and for some emergencies abroad and that the treatments not covered would not be reimbursed by the private insurance provider as it was only a complementary insurance.

As the complainant was experiencing some difficulties with her affiliation to the French Social Security Scheme, she decided to be treated in the United Kingdom between December 2017 and January 2018. On 16 February 2018, she filed a claim for reimbursement of the medical expenses she incurred in the United Kingdom in January 2018 that company H. refused to cover. She further requested the Secretary General to exercise his discretion to grant her a fixed sum allowing her to take out her own private insurance coverage pursuant to Regulation 7.1(2)(b) of the Staff Manual. In March 2018, company H. accepted, on an exceptional basis, to reimburse the medical expenses incurred by the complainant in the United Kingdom considering the fact that she had this treatment while the Organization was transiting from company C. to company H. The private insurance provider however specified that further reimbursement for treatment received in the United Kingdom would be based on the French Social Security Scheme rules. By memorandum of 20 March 2018, the complainant's 16 February claim was rejected.

In 2019, the complainant was diagnosed with a serious illness and requested to be authorized to undergo surgery in the United Kingdom since, as she contended, she continued to have difficulties with her affiliation to the French Social Security Scheme and with the filing of

claims for reimbursement. On 16 September 2019, she lodged a claim with the Secretary General for reimbursement of expenses she incurred for medical treatment in the United Kingdom as a result of surgery, as well as for future medical expenses resulting from her ongoing treatment. She contended that the Organization's health insurance policy was inadequate and that she had been denied the right to choose where to have her medical treatment. She requested to be granted the authorization to appeal the decision directly to the Tribunal due to her position in the Office of Legal Affairs and the sensitive information on her health that she did not want to disclose to her colleagues.

By letter of 21 November 2019, her claim was rejected. The Secretary General also refused to grant her the authorization to forgo the internal means of redress and appeal the decision directly to the Tribunal. On 22 and 29 November, the complainant contended that the Organization failed to reply within sixty days from the filing of her claim as required by Regulation 13.1(b) of the Staff Manual and that she was therefore entitled to pursue her claim directly before the Tribunal particularly having regard to Article VII, paragraph 3, of its Statute. On 29 November, the complainant impugned directly before the Tribunal what she considered an implied rejection of her claim of 16 September 2019.

The complainant asks the Tribunal to order reimbursement of the medical expenses incurred to date totaling 23,395 pounds sterling. She seeks a lump sum payment of 6,000 euros in order for her to take out her own private insurance and opt out of the French Social Security Scheme pursuant to Regulation 7.1(2) of the Staff Manual. She asks to be compensated in the amount of 10,000 euros for the loss of possibility to take out her own private health insurance and the increased costs of private health insurance as a result of developing a serious health condition. She further seeks moral damages in the amount of 5,000 euros.

Interpol asks the Tribunal to dismiss the complaint as irreceivable, and, subsidiarily, as unfounded on the merits.

CONSIDERATIONS

1. The complaint is irreceivable.

Pursuant to Article VII, paragraph 1, of the Statute of the Tribunal, "[a] complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of redress as are open to her or him under the applicable Staff Regulations". Pursuant to Article VII, paragraph 3, of the same Statute, "[w]here the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it, the person concerned may have recourse to the Tribunal and her or his complaint shall be receivable in the same manner as a complaint against a final decision".

Under the Tribunal's settled case law, the provisions of Article VII, paragraph 3, must be read in the light of paragraph 1 of that Article and are not applicable unless, as required under paragraph 1, the official concerned has first exhausted the internal remedies available to her or him (see Judgments 4517, consideration 4, and 2631, considerations 3 to 5).

According to the applicable Staff Regulations and Staff Rules:

– "(1) Any official of the Organization or, where applicable, any other person designated in Article II (6) of the Statute of the Administrative Tribunal of the International Labour Organisation (ILOAT), may:

  (a) challenge an administrative decision, taken by the Secretary General, which he considers is prejudicial to his interests and conflicts with the terms of his employment agreement or with any pertinent provisions of the present Regulations, of the Staff Rules or of the Staff Instructions;

  (b) lodge a claim in writing requesting the Secretary General to take a decision on his case, the grounds for which have not previously been the subject of any decision by the Secretary General. The Secretary General shall notify his decision, giving reasons, to the official concerned within 60 calendar days following receipt of the claim. When the period has expired, the absence of a reply to the claim shall be deemed to be an implicit decision of rejection which may also be challenged.

(2) A decision may be challenged within the Organization either through the review procedure or directly through the internal appeal procedure. These two procedures cannot be initiated simultaneously with respect to the same decision."

(Regulation 13.1);

– "After having used all the means available to him under Regulation 13.1, an official of the Organization or, where applicable, any other person designated in Article II (6) of the Statute of the ILOAT shall have the right to appeal to the ILOAT in accordance with the conditions set forth in the Statute of that Tribunal."

(Regulation 13.4);

– "(1) The Secretary General may, in agreement with the official, exempt the latter from the obligation to exhaust internal procedures by authorizing him to challenge a decision directly before the ILOAT. In such cases, the challenged decision shall be considered as final, and the official shall be deemed to have exhausted all other means of appealing against it.

[...]

(3) In the event that the Secretary General does not take action within 60 calendar days when a request for a review or an internal appeal is referred to him, the challenged decision shall be deemed to be final and may then be challenged before the ILOAT."

(Rule 13.4.1).

2. In the present case, the complainant lodged a claim with the Secretary General on 16 September 2019, which was rejected by a letter of 21 November 2019.

It is unnecessary to establish whether the letter of 21 November 2019 can be regarded as an explicit decision taken within the time limit of 60 calendar days as from the receipt of the claim (as the Organization contends), or whether the failure to reply to the claim by 16 November 2019 must be construed as an implied decision of rejection (as the complainant contends). Irrespective of whether there is, in the present case, an express or implied decision, in either case there is no final decision within the meaning of Article VII of the Statute of the Tribunal, since the complainant has not challenged the (express or implied) decision internally in compliance with the relevant Staff Regulations and Rules.

Indeed, an implied rejection must also first be challenged internally (see Regulation 13.1, paragraph 1(b) and paragraph 2, quoted above).

Even though the complainant had requested authorization to appeal the decision directly to the Tribunal, this request was rejected by the Secretary General by the 21 November 2019 letter. She has failed to provide the Tribunal with evidence that she was otherwise exempted from the obligation to exhaust internal procedures in compliance with Rule 13.4.1, paragraph 1, quoted in consideration 1. It is firm case law that a staff member is not allowed, on her or his own initiative, to evade the requirement that internal means of redress must be exhausted before a complaint is filed with the Tribunal (see Judgments 4443, consideration 11, and 3458, consideration 7).

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 3 May 2023, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2023 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

ROSANNA DE NICTOLIS

DRAŽEN PETROVIĆ